

REMARKS

This affirms the election made by the undersigned attorney for applicant, with traverse, to prosecute Group I, claims 1-24, 36-55 and 74, which are drawn to a method of producing a biomaterial. Claims 25-35, 56-73 and 75 have been cancelled.

Applicant has amended the claims to overcome the rejections under 35 U.S.C. § 112, second paragraph, listed on pages 3-4 of the Office Action.

Claims 1-24, 36-55, and 74 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Gregory et al, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Gregory et al in view of Labroo et al.

Applicant has amended this application to provide that it is a continuation-in-part of U.S. Serial No. 08/341,881, filed November 15, 1994 ("USSN '881"), and a continuation-in-part of USSN 08/658,855 filed on May 31, 1996 ("USSN '855"). USSN '881 is the parent application of the Gregory et al reference cited by the Examiner. For that reason, Gregory et al cannot be cited as a prior art reference against this application, particularly either under 35 U.S.C. § 102(a) or under 35 U.S.C. § 103(a).

In claims 36-99, applicant has provided amendments adding the language that the biomaterial employed is "consisting essentially of " tropoelastin. The language "consisting essentially of" limits the scope of the claim to those specified

ingredients and to those that do not materially affect the basic and novel characteristics of the composition.

Regarding Labroo et al, it is stated in column 4, lines 58-63, that the term "polymer" refers to a substance containing "two or more polypeptide monomers." The term "homopolymer" refers to polymers containing two or more "identical" polypeptide monomers. The term "copolymer" includes a polymer containing two or more "different" types of polypeptide monomers. In either the case of a homopolymer or a copolymer, as defined by Labroo et al, one or both of the polypeptide components must be a first polypeptide monomer which is a polypeptide monomer crosslinkable by transglutminase as described therein. In the case of a homopolymer, Labroo et al states that it is two or more of these first polypeptide monomers, and in the case of the copolymer it is this first polypeptide monomer and a second different polypeptide monomer. Tropoelastin is not taught or suggested for use as a first polypeptide monomer by Labroo et al. Tropoelastin is defined, in the disclosure of Labroo et al cited by the Examiner in Col. 9, lines 1-26, as one of a class of materials useful as a second polypeptide monomer, only in copolymer compositions, and only in combination with a first polypeptide monomer which is not tropoelastin. Tropoelastin is never disclosed or suggested as being usable as either a first polypeptide monomer or as a homopolymer component.

In order to have anticipation under 35 USC Section 102 (b), every element of the claim must be found in the prior art reference. As stated above, Gregory et al is not a viable reference. Labroo et al does not contemplate, suggest or teach the use of tropoelastin except as a second component of a copolymer the different first peptide monomers disclosed therein. Therefore, the requirements for anticipation have not been met by the Labroo reference with respect to the rejected claims.

Regarding the rejection of claims 1-24, 36-55, and 74 under 35 U.S.C. § 103(a) as being obvious over Gregory et al in view of Labroo et al, Gregory et al cannot be employed as a reference, and Labroo et al is inapplicable to applicant's claims, for the reasons stated above. Furthermore, Labroo et al per se does not suggest, teach or provide motivation for obviating the invention set forth in amended claims 1-24, 36-55, and 74, respectively, for the reasons discussed above.

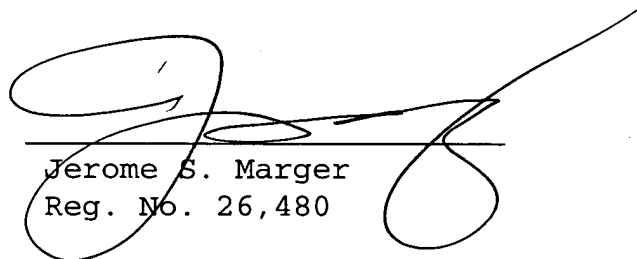
Claims 47, 48, and 53-55 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Labroo et al. In amended claims 47, 48, and 53-55, applicant has added the language that the biomaterial employed is "consisting essentially of " tropoelastin. In order to have anticipation under 35 U.S.C. § 102(b), each and every element of the claim must be found in the prior art reference. Labroo et al does not contemplate, suggest or teach connection of the use of tropoelastin except as a copolymer with a first peptide monomers as disclosed therein.

Therefore, the requirements for anticipation have not been met with respect to those claims by the Labroo reference. As an aside, it is also applicants' view that amended claims 47, 48, and 53-55 are also not obvious with respect to Labroo et al reference for the reasons stated above.

Finally, claims 36-46 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Labroo et al. Labroo et al per se does not suggest, teach or provide motivation for obviating the invention set forth in amended claims 1-24, 36-55, and 74, respectively, for the reasons discussed above.

In light of the above arguments and amendments to the claims, it is requested that the Examiner reconsider his rejections and pass this case to issue.

Respectfully submitted,



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